SUPREME COURT OF THE UNITED STATES.

No. 239.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, CLAIMANTS OF THE BARQUE NEWSBOY, APPELLANTS,

vs.

HUGH COYNE, OWNER OF THE SCHOONER WHITE CLOUD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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1 Circuit court of the United States for the eastern district of Michigan.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, owners of the barque Newsboy, &c., libellants and appellants,
vs.
THE SCHOONER WHITE CLOUD, HUGH COYNE, claimant and appellee.

Pleas at the city of Detroit, in the State and eastern district of Michigan, before the judge of the circuit court of the United States for the eastern district of Michigan, of the term of June, in the year of our Lord one thousand eight hundred and sixty-four.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Be it remembered, that on the sixth day of June, in the year of our Lord one thousand eight hundred and sixty-four, in the circuit court of the United States for said district, before the judge thereof then there, came James R. Bentley, Jesse Hoyt, and Charles Clark, claimants of the barque Newsboy, &c., appellants, and filed therein a transcript in appeal from the district court of the United States for the eastern district of Michigan, in the words
2 and figures following, that is to say:

UNITED STATES OF AMERICA, *Eastern District of Michigan:*

To the judge of the district court of the United States for the eastern district of Michigan, in admiralty:

The libel of James R. Bentley, Jesse Hoyt, and Charles Clark, owners of the barque Newsboy, against the schooner White Cloud, her tackle, apparel, and furniture, and George Elsey, late or now her master, in a case of collision, civil and maritime.

The said libellants do allege and articulately propound as follows:

First. That the said libellants are, and during all the times herein mentioned were, the owners of the said barque, her tackle, apparel, and furniture, and during said times the libellant James R. Bentley resided and now resides in the city of Buffalo, New York; the libellant Jesse Hoyt resided and now resides in the city of New York; and the libellant Charles Clark resided and now resides in or near said city of New York.

Second. That during all the times hereinafter mentioned and now the said barque Newsboy and schooner White Cloud were and are, respe
3 tively, each of the burden of twenty tons and upwards and enrolled and licensed for the coasting trade of the United States, and engaged in the business of commerce and navigation between divers ports and places in different States and Territories of the United States upon the western lakes and navigable waters connecting the same, within the true intent and meaning of the act of Congress of the United States entitled "An act extending the jurisdiction of the district courts to certain cases upon the lakes and navigable waters connecting the same," passed February 26, 1845.

Third. That heretofore and on the twelfth day of November, one thousand eight hundred and sixty-two, the said barque, she being then tight and staunch, and well manned and provided, was engaged in the performance of a voyage in pursuit of her business of commerce and navigation from Milwaukee, in the State of Wisconsin, to Buffalo, in the State of New York, laden with a cargo of wheat; that about seven o'clock in the evening of that day the said barque was upon Lake Michigan, to the northward and eastward of Manitowoc, and was upon a north-northeast course, and kept upon that course until the change thereof hereinafter mentioned; that the wind was about west by south then and until the collision hereinafter

4 mentioned; that the said barque was showing a white light, well and properly displayed, and so continued to show that light until the collision happened; that the barque during all said time had proper lookout; that at the time last aforesaid a red light was made from the barque, and about three points on her port bow, which afterwards proved to be upon said schooner, of which George Elsey was then master; that afterwards and before the collision a torch-light was displayed over the port bow of the barque; that after the light of the schooner was so as aforesaid made the said schooner changed her course to the eastward and so as to run across the bow of the barque; that the wheel of the barque was thereupon put hard aport for the purpose of avoiding the collision, and the master of the barque called out to the said schooner to put her helm down and luff; that a collision soon after followed and happened between said vessels without any fault or negligence upon the part of the barque, and entirely by the fault and negligence of the schooner and her officers, and, among other things, for the reasons that the said schooner before said collision showed a wrong light, had no good or sufficient lookout, and improperly changed her course, and that by reason of the premises the said libellants sustained great damage;

5 that by means of the said collision the said barque, with her rigging, tackle, apparel, and furniture, was very much injured, broken, and large parts of the same were carried away, and that the said barque, was much strained and injured, and that the amount of said damages was, and the said libellants have sustained damages in the premises, as near as said libellants can state and as they allege the same, beside the other damages herein mentioned, to the amount of one thousand eight hundred and sixty dollars and twenty-one cents, no part of which or of any interest which has accrued thereon has been paid.

Fourth. That in consequence of the injuries sustained in said collision, the said barque was compelled to proceed to port, in order to procure such repairs to be made; that by reason of such collision, and for the purpose of having such repairs made, said barque was prevented from pursuing her aforesaid business of navigation while the repairs of said injuries were being made, for the period of ten days, as near as the said libellants can state the same; that during said time while said repairs were being made the said barque could, as libellants allege, have been chartered for and her

6 services were worth the sum of sixteen hundred dollars, as near as said libellants can state the same, and during that time was prevented from earning freight, and that by reason of loss of the use of the said barque, as herein stated, the said libellants have sustained further damages to the extent of said sixteen hundred dollars, as near as they can state, and, as they allege, no part of which or of any interest which has accrued thereon has ever been paid.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court; that the said libellants have a lien upon the said schooner White Cloud, her tackle, apparel, and furniture, to the amount of three thousand four hundred and sixty dollars, and interest thereon from the twenty-fifth day of November, one thousand eight hundred and sixty-two, no part of which (though the same has been duly demanded) has been paid, and that said lien is in full force.

And hereupon the said libellants pray the aid of this court in the premises that the said schooner White Cloud, her tackle, apparel, and furni-

7 ture, may be arrested, condemned, and sold, that the usual process of monition in such cases may be issued; that this court would decree that the claims and demands of the said libellants in the premises, with their costs and damages, may be decreed in their favor and paid, and that said libellants

may have such other and further or further or other relief in the premises as may be meet.

JAS. R. BENTLEY.
JESSE HOYT,
CHARLES CLARK,
By JAS. R. BENTLEY.

DOUGLAS & ANDREWS, *Proctors.*
GEO. B. HIBBARD, *Advocate.*

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York, ss:*

James R. Bentley, being duly sworn, says that he is one of the libellants named in the foregoing libel, and knows as much of the matters therein stated or referred to as the others of said libellants, and that the said libel is true, as he verily believes.

JAS. R. BENTLEY.

Subscribed and sworn before me this 29th day of September, 1863.
CHAS. W. NEWTON,
U. S. Com'r for the Southern District of New York, 2d Circuit.

8 In the district court of the United States for the eastern district of Michigan, in admiralty.

The answer of of Hugh Coyne to the libel of James R. Bentley, Jesse Hoyt, and Charles Clark, against the schooner White Cloud and George Elsey, her master, alleges:

First. That he is ignorant of the matters set forth in the 1st article of said libel, and therefore denies the same and requires strict proof thereof.

Second. He admits the 2d article of said libel to be true.

Third. That as to the 3d, 4th, and 5th articles of said libel the allegations therein are in great part falsely alleged and pleaded, and respondent desires the same, except as is hereinafter admitted, for the facts are and were: That on November 12th, 1863, the White Cloud was in Lake Michigan, bound from Buffalo to Chicago; she was tight, staunch, and strong, fully manned, equipped, and provided with officers and crew at these places, and so remained until after the collision; that at about 7 p. m. the wind was about SW. by W, the White Cloud on starboard tack, close hauled, with a bright red light, properly displayed, and well burning; that at same time
9 the Newsboy was going down the lake with the wind free, and bound to steer clear and give way to the White Cloud; that instead thereof the said Newsboy was so improperly officered and manned, her officers and crew were so inattentive to their duties, and the said vessel was so carelessly and unskillfully managed and provided, that by means thereof the said Newsboy was run in and upon the said White Cloud, and did her great and serious damage, causing loss and damage to said respondent of five thousand eight hundred and fifty dollars, ($5,850,) for which he has heretofore commenced suit in this court.

Fourth. That all and singular the premises are true.

Wherefore he prays that said libel may be dismissed with costs.

H. COYNE.

Sworn and subscribed before me on this 2d day of Feb'y, 1864.
WM. D. WILKINS, *U. S. Com'r, E. Dist. of Mich.*

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

The President of the U. S. of America to the marshal of the eastern dist. of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United

States for the said eastern district of Michigan, on the nineteenth day
10 of October, in the year of our Lord one thousand eight hundred and sixty-three, by James R. Bentley, Jesse Hoyt, and Charles Clark, owners of the barque Newsboy, against the sch'r White Cloud and against George Elsey, now or late her master, claiming that there is due them for damages sustained by said barque on occasion of her having been run into and collided with by said schooner White Cloud, on the evening of November 12th, 1862, on Lake Michigan, near Monitowoc, (said collision being the fault of the master and crew of said schooner,) the sum of sixteen hundred dollars, ($1,600,) for the reason and causes in the said libel alleged and mentioned, and praying the usual process and motion of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may be cited in general and special to answer the premises, and that all proceedings being had, that the said schooner or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are, therefore, hereby commanded to attach the said schooner White Cloud, or vessel, her boats, tackle, &c., and to detain the same in your custody until the further order of the said court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold
11 pursuant the prayer of the said libel, that they be and appear before the said court, to be held in and for the said eastern district of Michigan, on the first Monday of January, 1864, at ten o'clock in the forenoon of the same day, (if the same shall be a day of jurisdiction; otherwise, on the next day of jurisdiction thereafter,) then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Ross Wilkins, judge of the district court of the United States for the eastern district of Michigan, at the district court-room, in the city of Detroit, in the said district, this nineteenth day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth.

JNO. WINDER, *Clerk.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

By virtue of the within writ, on the 1st day of December, A. D. 1863, I seized the within-named schooner White Cloud, her boats, tackle, apparel, and furniture, and now have the same in my custody to await the further order of the court in the premises.

Dated Detroit, Dec'r 1st, 1863.

CHARLES DICKEY, *Marshal,*
By J. P. WHITING, *Dep't.*

12 *Decree dismissing libel, and order of reference.*

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in Detroit, on Tuesday, the fifth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ross Wilkins, district judge.

In the matter of the libel of Hugh Coyne, owner of the schooner White Cloud, *vs.* the barque Newsboy, and James R. Bentley, Jesse Hoyt, and Charles Clark, owners barque Newsboy, *vs.* the schooner White Cloud, cross-libels for collision, in admiralty.

These causes having been heretofore fully argued by counsel and sub-

mitted upon the proofs and pleadings therein, and mature deliberation having been had thereupon, it is now by the court here ordered, adjudged, and decreed that the libel of said Hugh Coyne against the barque Newsboy be sustained, and a decree entered thereupon for damages; and that the libel of said Bentley, Hoyt, and Clark be dismissed, with costs to said Coyne against said barque Newsboy, and the claims of said sch'r White Cloud against said Bentley, Hoyt, and Clark. And it is further ordered that it be referred to Wm. D. Wilkins, a com'r of this court, to ascertain the damages sustained by libell't Coyne on occasion of the collision set forth in his libel, to take such testimony as may be offered in relation thereto by either
13 party, and to report the am't to this court with all convenient speed.

Final decree.

At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, in said district, on Thursday, the twefth day of May, in the year of our Lord one thousand eight hundred and sixty-four.

In the matter of the libel and claims of Hugh Coyne *vs.* the barque Newsboy and Stanford, her master, and James R. Bentley, Jesse Hoyt, and Charles Clark *vs.* the schooner White Cloud.

And it further appearing that in the cross-libel in this cause, wherein said James R. Bentley, Jesse Hoyt, and Charles Clark are libellants, against the schooner White Cloud, her boats, &c., and which said libel hath heretofore by the court been dismissed, no bond hath been filed by said libellants to pay the costs awarded against them to said claimant, Hugh Coyne, by this decree, and that under the rule of this court Messrs. Douglass & Andrews, libellants' proctors, are liable therefor: It is, therefore, on motion of John S. Newberry, esq., proctor for said respondent, Hugh Coyne, now ordered and decreed that the said Messrs. Douglas & Andrews, proctors for said libellants, Bentley, Hoyt, and Clark, do within ten days from this day pay into the registry of this court the following costs, taxed against said libellants, Bentley, Hoyt, and Clark, on the dismissal of theirl ibel against said schooner White Cloud, which said cause, pursuant to the provisions
14 of the act of Congress in such case made and provided, are now here taxed at the sums following, and made a part of this decree, or that in default thereof execution do issue against them therefor.

John S. Newberry, esq., respondent's proctor, a docket fee on dismissal of libel of twenty dollars	$20 00
Chas. Dickey, marshal of this court, for service of process in this cause, two and 12-100 dollars	2 12
Jno. Winder, clerk of this court, his taxed fees as said clerk of record therein, nineteen 05-100 dollars	19 05
Making in all for the taxed costs of this cause as against said libellants, Bentley, Hoyt & Clark, and in favor of said respondent, Hugh Coyne the sum of forty-one 17-100 dollars	41 17

And hereupon Messrs. Douglass & Andrews, proctors for said libellants, Bentley, Hoyt & Clark, give notice in open court that they will appeal from the foregoing decree to the next circuit court of the United States for the seventh circuit and eastern district of Michigan, and are granted ten days to perfect said appeal, and the amount of said libellants' bond for costs on said appeal is now fixed by the court at five hundred dollars.

15 In the circuit court of the United States for the eastern district of Michigan, in admiralty.

BENTLEY *et al.*, libellants and appellants
vs.
THE SCH. WHITE CLOUD, COYNE, claimant and appellee. } On appeal.

It is hereby moved by the appellee that the appeal in this cause be dismissed for the following reasons :

First. That there has been no proper appeal in writing made and filed in said cause.

Second. That there has been no sufficient security given in such sum as the district judge should direct, with securities, approved by such judge or the clerk of said court, as required by the rules and practice of this court and said district court in cases of appeal.

Third. Because said appeal has not been perfected as required by the said rules, and is irregular.

Wherefore appellee prays that said appeal may be dismissed with costs.

HUGH COYNE,
By NEWBERRY & POND, *Proctors.*

16 The circuit court of the United States for the eastern district of Michigan, in admiralty.

Whereas an appeal has been taken to this court from the district court of the United States for the eastern district of Michigan, in a certain cause, wherein James R. Bentley, Jesse Hoyt, and Charles Clark, are libellants, and the schooner White Cloud and George Elsey, her master, are defendants, and Hugh Coyne is claimant, by said libellants, and said appellants have been ordered to give security in the sum of five hundred dollars for the payment of all costs and damages on appeal in the said circuit court:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of five hundred dollars to pay all damages and costs on the appeal in this court.

EDWARD KAUTER.
GEO. ANDREWS.

Taken and acknowledged this first day of June, 1864.

WM. D. WILKINS,
U. S. Comm'r, E. Dist. of Mich'n.

EASTERN DISTRICT OF MICHIGAN, *ss :*

Edward Kauter, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts, in real estate subject to execution within said district.

EDWARD KAUTER.

Sworn and subscribed before me June 1, 1864.

WM. D. WILKINS,
U. S. Comm'r, E. District of Michigan.

17 EASTERN DISTRICT OF MICHIGAN, *ss :*

George Andrews, of said district, party to the above stipulation, being duly sworn, deposeth and saith that he is worth the sum of five hundred dollars over and above all his just debts, in real estate subject to execution in said district.

GEO. ANDREWS.

Sworn and subscribed before me this June 1st, 1864.

WM. D. WILKINS,
U. S. Comm'r, E. Dist. Mich'n.

I do hereby approve of the above bond and of the sureties therein named as sufficient.

June 1, 1864.

JNO. WINDER, *Clerk*,
By WM. D. WILKINS, *Dep. Clerk.*

The circuit court of the United States for the eastern district of Michigan, in admiralty.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, libellants and appellants,
vs.
THE SCHOONER WHITE CLOUD, AND GEORGE ELSEY, HER master, Hugh Coyne, claimant.

To the honorable the circuit court for the eastern district of Michigan:

The appeal of James R. Bentley, Jesse Hoyt, and Charles Clark, the above-named appellants, respectfully sheweth that on or about the 25th day
18 of May, A. D. 1863, the above-named libellant, Hugh Coyne, exhibited his libel in the district court for the eastern district of Michigan, against the above-named barque Newsboy and Edward Stanford, her master, claiming damages against said barque and her captain for injuries alleged to have been sustained by a certain schooner called the White Cloud, whereof said libellant was alleged to be the owner, in consequence of a collision between said schooner White Cloud and said barque Newsboy, praying, amongst other things, that said barque and her said captain might be condemned to pay the said demand and the costs. Process issued out of said court was served upon said barque and the said Edward Stanford, and thereupon the said Stanford, together with the above-named James R. Bentley, Jesse Hoyt, and Charles Clark, owners of said barque Newsboy, did on or about the 19th day of August, 1863, file their joint answers to said libel, praying that said libel might be dismissed with their costs in that behalf, as by the said libel and the said answer will appear.

On or about the 19th day of October, 1863, the appellants, James R. Bentley, Jesse Hoyt, and Charles Clark, filed their cross-libel in said cause against the said schooner White Cloud and George Elsey, her master, claiming damages for injuries sustained by the said barque Newsboy, by the collision above mentioned, and praying, amongst other things, that said schooner and her said captain might be condemned to pay the said damages and
19 costs. Process out of said court was served upon said schooner, and thereupon the said Hugh Coyne, claimant of said schooner, did, on or about the 2d day of February, 1864, file his answer to said cross-libel, praying that said cross-libel might be dismissed with costs, as by the said libel and the said answer will appear.

Said cause and said cross-cause came on to be heard together before the Honorable Ross Wilkins, judge of said district court, on or about the 9th day of February, 1864, upon the pleadings and proofs therein; and the said judge having advised therein, on the 5th day of of April, 1864, made a decree in said causes, whereby it was decreed that the libel of said Hugh Coyne against the barque Newsboy be sustained, and a decree entered thereupon for damages, and that the libel of these appellants, Bentley, Hoyt, and Clark, be dismissed with costs, and that it be referred to William D. Wilkins, a commissioner of said court, to ascertain the damages sustained by said libellant, Coyne, on occasion of the collision set forth in his libel, to take such testimony as might be offered in relation thereto by either party, and to report the amount proved to said district court, as by reference to said decree will appear; under which decree a reference was had to said commissioner, who reported that there was due from the said barque Newsboy, her owners

or claimants, to the said libellant, Hugh Coyne, for damages sustained
20 on account of the collision aforesaid, the sum of five thousand one hundred and thirty-four dollars and fifty-five cents, with interest thereon from the 12th day of November, 1862, to the date of entry of final decree in said cause; which report was, on the 12th of May, 1864, confirmed by said court by the final decree thereof.

And the said appellants are advised and insist that the said decree is erroneous in each and all its parts and particulars, and in the fact that the said Hugh Coyne was not entitled to any of the relief decreed to him by said decree, and in the fact that said appellants were and are entitled to all the relief prayed for in their said libel; and these appellants, for these and other reasons, appeal to the circuit court of the United States for the eastern district of Michigan, to the next term thereof, from the whole of the said decree and from each and every part thereof, and more particularly from that part thereof dismissing the libel of the said appellants with costs, and from each part thereof which adjudges or decrees that the said libel of the said Hugh Coyne be sustained or that he should recover any sum or damages, and from each and all parts of said decree by which it is adjudged or decreed that the said appellants or their surety or sureties, stipulator or stipulators, bondsman or bondsmen, or proctors, shall pay any sum or sums, or costs, and from each and all parts of said decree which decree or adjudges that there was any negligence, unskilfulness, or fault upon the part
21 of the Newsboy or any of her officers or crew, or that there was not negligence, unskilfulness, or fault upon the part of the White Cloud, her officers or crew.

It is intended upon and in such appeal to make new allegations and proofs (but not to amend any pleading or make any new allegation therein,) and to allege and prove that each and every allegation in the libel or in the answer of these appellants already filed in said district court is true, and that each and every allegation in the libel or answer of the said Hugh Coyne is not true, and that the said Hugh Coyne sustained much less damages in consequence of the collision between the said vessels than that decreed to him, and that they intend upon their libel and answer already filed in said district court to pray for relief upon and in said appeal; that is to say, that the prayer of the libel of the said appellants be granted and they have decree accordingly, and that the prayer of the libel of the said Hugh Coyne be denied, and the said libel of the said Hugh Coyne be dismissed with costs to the said appellants, and that decree may be made accordingly, and that said appellants may have such other and further or other or further relief in the said circuit court as upon the pleadings and proofs they may be entitled to.

The said appellants intend to have this cause heard anew in the said
22 circuit court on the pleadings and proofs in the district court and on other proofs to be taken, made, and introduced in the said circuit court, and they pray that the said decree, and each and every part thereof, may be reversed, with costs, and that the said appellants may have such decree or decrees or relief in the said circuit as they hereby pray for; and they expressly pray for such relief as it is above stated they intend to pray for, and that the said appellants may have such relief and decrees against the said Hugh Coyne, and against the bondsman or bondsmen, stipulator or stipulators, surety or sureties, and proctors of the said Hugh Coyne, and each and every of them, and for such damages and costs in said district court and in said circuit court as the said appellants may be entitled to.

DOUGLASS & ANDREWS, *Proctors for Appellants.*

GEO. B. HIBBARD, *Advocate.*

DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Michigan, ss:

I, John Winder, clerk of said court, do hereby certify the foregoing to be the original proceedings in the cause named at the commencement of this record, together with all depositions read on the hearing, the commissioner's reports, and the interlocutory and final decrees of said court, prepared according to Rule No. 46 of said court.

Witness my hand and the seal of said court, at Detroit, in said district, this 6th day of June, A. D. 1864. JNO. WINDER, *Clerk.*

23 At a session of the circuit court of the United States for the seventh circuit and eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Wednesday, the sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Noah H. Swayne, one of the associate justices of the Supreme Court of the United States, and Hon. Ross Wilkins, district judge.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, owners of the barque Newsboy, libellants and appellants,
vs.
THE SCHOONER WHITE CLOUD, HUGH COYNE, claimant and appellee.
} On appeal from the district court of the United States for the eastern district of Michigan.

This cause came on to be heard, and the record of the court below being seen and inspected by this court, it is ordered, adjudged, and decreed by the court here that the decree and judgment of the district court of the United States for the eastern district of Michigan, and between the parties aforesaid, be, and the same is, now by the court here affirmed. It is therefore considered, adjudged, and decreed by this court that the libel of the
24 said libellant and appellants against the said appellee be dismissed, and that the said appellee, Hugh Coyne, do recover of said libellants the sum of one hundred and fifty-three dollars and twenty-one cents for his costs and charges by him in his defence laid out and expended.

And hereupon said appellants, by Douglass & Andrews, their proctors, now here enter their appeal of this case to the Supreme Court of the United States, and the court hereby allow said appeal, and fix the amount of the bond to be given by the appellants on said appeal at the sum of one thousand dollars.

(Signed) NOAH H. SWAYNE, *Justice.*
(Signed) ROSS WILKINS, *Dist. Judge.*

Judgment signed November 16, 1864.

WM. D. WILKINS,
Clerk U. S. Cir. Ct., E. Dist. Mich'n.

25 The circuit court of the United States for the seventh circuit and eastern district of Michigan.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, libellants and appellants,
v.
THE SCHOONER WHITE CLOUD AND GEORGE ELSEY, HER master, Hugh Coyne, claimant and appellee.

To the Supreme Court of the United States:

The petition of appeal of James R. Bentley, Jesse Hoyt, and Charles Clark, the above-named appellants, respectfully showeth that on or about the 19th day of October, 1863, the appellants above named filed their libel in the dis-

trict court of the United States for the eastern district of Michigan, against the schooner White Cloud and George Elsey, her master, claiming damages for injuries sustained by a certain barque called the Newsboy, whereof said appellants were owners, in consequence of a collision which had occurred between said barque and a certain schooner called the White Cloud, and praying, amongst other things, that said schooner and her said captain might be condemned to pay the said damages and the costs.

Process out of said court was served upon said schooner, and thereupon said Hugh Coyne, claimant of said schooner, did on or about the second day of February, 1864, file his answer to said libel, praying that said libel might be dismissed with costs, as by said libel and answer will appear.

26 Said cause came on to be heard on or about the 9th day of February, 1864, before the Honorable Ross Wilkins, judge of said district court, upon the pleadings and proofs therein; and the said judge having advised therein, on the 5th day of April, 1864, made a decree in said cause that the said libel of these appellants be dismissed with costs. The above-named appellants thereupon appealed from said decree to the circuit court of the United States for the seventh circuit and eastern district of Michigan, and such proceedings were thereupon had in said cause that on the 16th day of November, 1864, said cause was heard in said circuit court and the said court, by a final decree then made in said cause, in all things affirmed the said decree of said district court; and a final decree was rendered and made in and by said circuit court against the said appellants, Bentley, Hoyt, and Clark, that their said libel be dismissed.

And the said appellants are advised that the said decree of said circuit court is erroneous in each and all of its parts and particulars, and in the fact that said libel ought not to have been dismissed, and said decree of said district court ought not to have been affirmed by said circuit court, and that these appellants were and are entitled to all the relief prayed for in and by their said libel. And these appellants, for these and other reasons, and in open session of the said circuit court, and at the same term and session thereof, at which said decree of said circuit court was rendered and

27 made, appeal to the Supreme Court of the United States from the said decree of said circuit court, and from the whole of said decree, and from each and every part thereof, and more particularly from that part thereof dismissing the libel of these appellants with costs, and from each and all parts of said decree by which it is adjudged or decreed that the said appellants, or their surety or sureties, bondsman or bondsmen, stipulator or stipulators, or proctors shall pay any sum or sums or costs, and from each and all parts of said decree which decrees or adjudges that there was any negligence, unskilfulness, or fault upon the part of the Newsboy, her officers or crew, or that there was not negligence, unskilfulness, or fault on the part of the White Cloud, her officers or crew.

Wherefore these appellants pray that the said decree of said circuit court and each and every part thereof may be reversed with costs, and that these appellants may have such decree or decrees and such relief in the said Supreme Court against the said Hugh Coyne and against his bondsman or bondsmen, surety or sureties, stipulator or stipulators, and proctors, and each and every of them, and for such damages and costs as the said appellants may be entitled to.

JAMES R. BENTLEY,
JESSE HOYT,
CHARLES CLARK, *Appellants.*

GEO. B. HIBBARD, *Proctor and Advocate for Appellants.*
DOUGLASS & ANDREWS, *Proctors for Appellants.*

28 I hereby allow the within appeal.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

29 UNITED STATES OF AMERICA, *ss:*

To Hugh Coyne, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the first Monday of December next, pursuant to an appeal from a decree of the circuit court of the United States for the eastern district of Michigan, wherein James R. Bentley, Jesse Hoyt, and Charles Clark are libellants and appellants, and you are appellee, to show cause, if any there be, why the said decree should not be corrected and justice be done to the parties in that behalf.

Witness the Honorable Noah H. Swayne, one of the justices of the Supreme Court of the United States, this 16th day of November, in the year of our Lord eighteen hundred and sixty-four. N. H. SWAYNE,

Asso. Jus. Sup. Court U. S.

Filed in clerk's office Nov. 28, 1864.

JNO. WINDER, *D'y Clerk.*

30 EASTERN DISTRICT OF MICHIGAN, *ss:*

Augustus S. Johnson, of said district, being duly sworn, deposeth and saith that on the 28th day of November, 1864, he served the within citation on the within-named Hugh Coyne by delivering to him personally, at Detroit, in said district, a true copy of said citation, and at the same time showing to him this original; and that on the same day last aforesaid he likewise served the said citation on the law-firm of Newberry & Pond by delivering personally to John S. Newberry, one of said firm, a true copy of said citation, and at the same time showing to him this original.

AUGUSTUS S. JOHNSON.

Sworn and subscribed to this 28th day of November, A. D. 1864, before me.

J. H. A. S. CULLEN,

U. S. Commissioner for the Eastern District of Michigan.

Filed in open court Nov. 28, 1864.

WM. D. WILKINS, *Clerk.*

31 Know all men by these presents that we, William L. P. Little, of East Saginaw, Mich., and Edward Kauter, of Detroit, are held and firmly bound unto Hugh Coyne, of Detroit, Michigan, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Hugh Coyne, or to his certain attorney, heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of them, firmly by these presents. Sealed with our seals, dated the 16th day of November, one thousand eight hundred and sixty-four.

The condition of this obligation is such that whereas lately in a suit depending in the circuit court of the United States for the seventh circuit and eastern district of Michigan, in which suit James R. Bentley, Jesse Hoyt, and Charles Clark were libellants, and said Hugh Coyne was claimant of the schooner White Cloud libelled in said suit, a decree was by said court rendered in favor of said Hugh Coyne and against the said Bentley, Hoyt, and Clark, libellants as aforesaid; and whereas the said James R. Bentley, Jesse Hoyt, and Charles Clark have prosecuted an appeal to the Supreme Court of the United States to reverse said decree:

Now, therefore, if the said James R. Bentley, Jesse Hoyt, and Charles Clark shall prosecute their said appeal to effect, and shall answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, to remain in full force and virtue.

W. L. P. LITTLE. [SEAL.]
EDWARD KAUTER. [SEAL.]

32 EAST'N DISTRICT OF MICHIGAN, *ss:*

Personally appeared William L. P. Little, of East Saginaw, in said district, and made oath that he is worth the sum of one thousand dollars after payment of his just debts, in real estate subject to execution in said district.

W. L. P. LITTLE.

Sworn and subscribed before me this 18th day of November, 1864.

WM. L. WEBB,
U. S. Com'r for Eastern Dist. of Mich.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Personally appeared Edward Kanter, of Detroit, and made oath that he is worth the sum of one thousand dollars after payment of his just debts, in real estate subject to execution in said district.

JNO. WINDER,
U. States Commissioner for the Eastern District of Michigan.

I approve the within bond.

N. H. SWAYNE, *Asso. Jus. S C. U. S.*

Filed in clerk's office Nov. 28, 1864. JNO. WINDER, *D'y Clerk.*

33 Circuit court of the United States for the eastern district of Michigan.

JAMES R. BENTLEY, JESSE HOYT, AND CHARLES CLARK, libellants and appellants,
v.
THE SCHOONER WHITE CLOUD AND GEORGE ELSEY, HER master, Hugh Coyne, claimant and appellee.

It is hereby stipulated in this cause, which is the cross-libel to the cause hereinafter mentioned, that all the testimony, depositions, and evidence filed or returned on or before this date in the case of Hugh Coyne *vs.* the barque Newsboy and Edward Stanford, her master, James R. Bentley, Jesse Hoyt, Charles Clark, claimants, which cause was tried in the district court of said district at the same time with the cause above entitled, shall be considered as taken in this cause also, and shall be read on the hearing of this cause in the circuit court and in the Supreme Court, should the cause be appealed, subject to like objections and with like effect in all respects as if originally taken in this cause.

Dated November 16, 1864.

DOUGLASS & ANDREWS,
Proctors for Appellants.
NEWBERRY & POND,
Proctors for Appellee.

34 Filed in open court Nov. 21, 1864.

JNO. WINDER, *D'p'y Clerk.*

35 CIRCUIT COURT OF THE UNITED STATES
For the Seventh Circuit and Eastern District of Michigan, ss:

I, William D. Wilkins, clerk of said court, do hereby certify the above and foregoing to be a true transcript of the record and proceedings of said court in the cause therein entitled, and of the proofs filed therein, and that the petition on appeal, citation, appeal bond, bond to clerk for costs, and stipulation are the original documents filed in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this twenty-eighth day of December, anno Domini eighteen hundred and sixty-four.

WM. D. WILKINS,
Clerk U. S. Circuit Court, E. Dist. Mich'n.

Filed December 31, 1864.